

Department of Financial Protection and Innovation

Position Duty Statement

DFPI HRO 203 (Rev. 07-2021)

NAME	EFFECTIVE DATE
CLASSIFICATION TITLE Attorney IV	POSITION NUMBER 410-X03-5780-xxx
WORKING TITLE Senior Counsel	DIVISION/OFFICE/UNIT/SECTION Securities Regulation Unit / Legal Division
BARGAINING UNIT R02	GEOGRAPHIC LOCATION

General Statement: Under the general direction of the Assistant Chief Counsel, the Attorney IV independently performs the most complex and sensitive legal assignments with broad discretion. The incumbent performs in a lead capacity over less senior counsel and is expected to project a professional demeanor and exhibit refined communication skills in working with executives, professional staff, support staff, other departmental programs, and the public in providing all division lead and subject matter expertise functions. Duties include, but are not limited to, the following:

A. Specific Assignments [Essential (E) / Marginal (M) Functions]:

40%(E) Investigates the most difficult and legally sensitive complaints regarding franchisors relative to possible violations of the Franchise Investment Law (FIL). Refers matters involving egregious consumer harm to the Enforcement Division with an internal legal analysis. Conducts compliance investigations, negotiates settlement terms, drafts Consent Orders related to non-compliance by Franchisors or Franchise Brokers under the FIL. Other related duties include collecting penalties and costs, creating a litigation receipt for Accounting, providing the respondent(s) payment instructions and coordinating the posting of Consent Orders to the Department's website. Serves as Department's FIL expert witness and provides testimony in administrative or civil or criminal actions. Acts as a subject matter expert for Enforcement Division attorneys, investigators, or examiners regarding litigation of administrative, civil or criminal franchise matters. Acts as duty counsel and responds to inquiries from industry counsel, prospective franchise applicants, investors, and members of the public regarding the FIL.

30%(E) Investigates the most difficult and legally sensitive complaints regarding issuers relative to possible violations of the Corporate Securities Law (CSL). Refers matters involving egregious consumer harm to the Enforcement Division with an internal legal analysis. Conducts compliance investigations, negotiates settlement terms, drafts Consent Orders related to non-compliance by Issuers under the CSL. Other related duties include collecting penalties and costs, creating a litigation receipt for Accounting, providing the respondent(s) payment instructions and coordinating the posting of Consent Orders to the Department's website.

Serves as Department's CSL expert witness and provides testimony in administrative or civil or criminal actions. Acts as a subject matter expert for Enforcement Division attorneys, investigators, or examiners regarding litigation of administrative, civil or criminal securities matters. Acts as duty counsel and responds to inquiries from industry counsel, prospective franchise applicants, investors, and members of the public regarding the CSL.

10%(E) Independently performs with broad discretion, legal work of the most complex and sensitive nature, including the most difficult, complex, and sensitive applications filed under the FIL. Incumbent is a subject matter expert on the federal amended franchise rule and its interplay and impact on compliance under the FIL, accompanying regulations and the North American Securities Administrators Association (NASAA) franchise commentaries. Efficiently resolves issues within franchise applications through deficiency letters for those offerings not in compliance with the FIL, federal amended franchise rule or NASAA commentaries. Applies expert understanding of financial statements and ability to identify financial assurances or other conditions of registration as needed. Ensures the Department's statutory deadlines for reviewing franchise applications are met. Incumbent is the subject matter expert for any matters relating to the FIL and provides expertise on FIL matters and advises regulatory examiners, division support staff, and/or other divisions regarding FIL compliance.

10%(E) Independently performs with broad discretion, legal work of the most complex and sensitive nature, including the most difficult, complex, and sensitive applications filed under the CSL. Efficiently performs a merit review of securities applications to verify compliance with the CSL and accompanying regulations. Is a subject matter expert on federal securities laws and its interplay and impact on compliance under the CSL and accompanying regulations. Uses securities expertise to identify and resolve issues within securities applications through deficiency letters for those qualifications not in compliance with CSL and accompanying regulations. Conducts merit review and risk analysis to determine suitability standards and communicates conditions of qualification to issuer or outside counsel. Ensures the Department's statutory deadlines for reviewing securities applications are met. Is the subject matter expert for any matters relating to CSL compliance and advises division regulatory examiners, support staff, and/or other divisions regarding CSL compliance.

Represents the department in the most difficult and legally sensitive fairness hearings under the CSL as either department counsel and/or hearing officer. Handles the most complex and sensitive fairness hearings transactions involving mergers and acquisitions, purchases and sales or reorganizations. Reviews fairness hearing applications, finalizes notices of hearing and schedules the fairness hearing. Advises the commissioner and executive staff on complex fairness hearings and provides recommendations for hearing strategies. Solicits testimony at fairness hearings and examines or cross-examines witnesses. In hearings where the transaction is opposed, writes a fairness opinion for the commissioner.

5%(E) Prepares and renders the most complex and difficult legal opinions; identifies potential legal problems and proposes solutions, provides interpretations and analyses of laws, legislation,

regulations, policies, and court rulings affecting the programs, duties, functions and responsibilities of the department under the CSL and FIL. Serves as the most senior attorney in providing interpretation of administrative, constitutional, federal, and state law in the highly specialized franchise law or highly complex securities law including mergers and acquisitions, purchases and sales.

Uses the work assignments to mentor and develop lower level counsel. Assists Assistant Chief Counsel (ACC) in appropriate workload distribution based on attorney classification level. Assists ACC in providing management or peer review of franchise and securities applications, file memoranda, enforcement referrals, Consent Orders, investigation correspondence or negotiations and other internal memoranda of less senior counsel. Assists ACC to identify and track extraordinary applications, Notice of Violations and Requests for Confidential Treatment as defined and required by the commissioner's Delegation of Authority. Assists the division's regulatory exam unit and provides franchise and securities subject matter expertise as needed. Trains and mentors new or existing counsel, examiners, support staff, or other department programs as needed.

5%(M) Performs other job-related duties as required.

B. Supervision Received

The Attorney IV reports directly to and receives the majority of assignments from the Assistant Chief Counsel; however, direction and assignments may also come from the Deputy Commissioner of the Legal Division and may receive direction and/or guidance from an Attorney V Lead.

C. Supervision Exercised

None

D. Administrative Responsibility

None

E. Personal Contacts

The Attorney IV interacts with staff and management of all levels throughout the Department, Department leadership, industry representatives, investor advocates, investors, prospective investors, complainants, stakeholders and other interested parties throughout the general public, other governmental agencies including control agencies, staff and members of the Legislature, and staff of the Governor's office. The interactions may involve highly sensitive material and communications and will be frequent and potentially continuous in nature.

F. Actions and Consequences

Inadequate performance of duties includes but is not limited to duties that are performed untimely, incomplete (including omitting material information), inaccurate (including errors), or in a manner lacking sound judgment or sound consideration of the consequences and risks of

the recommended course of action. The consequences of failing to perform duties adequately include potential direct and indirect economic harm to impacted persons including, but not limited to, vulnerable populations and small businesses, the Department, investors, and other impacted parties; reputational harm to the Department and potentially the Administration; and other harm to the Department such as lost time and resources for the inadequate performance and the lost time and resources to remedy the inadequate performance, both within and outside the division and the Department. Inadequate performance of duties may result in significant or critical harm.

Functional Requirements

The Attorney IV is expected to work all hours necessary to fulfill their responsibilities. The Attorney IV will normally average forty (40) hours of work per week including paid leave; however, work weeks of a longer duration may occasionally be necessary. The Attorney IV will work in an office or telework setting, with artificial light and temperature control. The use of a personal computer, telephone, copier and fax machine is essential to the duties of this position. The position requires bending and stooping to retrieve files, sitting and standing consistent with office work, and light lifting of no more than 25 lbs.

G. Other Information

The position requires active membership in the California State Bar. Occasional Travel may be required.

In performing the duties herein, the Attorney IV does all of the following:

Exercises good judgment in decision-making, exercises creativity and flexibility in problem identification and resolution, and manages time and resources effectively. Works well with others, under changing priorities, and works irregular hours when workload dictates. Regular attendance and punctuality are essential. Possesses good written and verbal communication skills.

Possesses knowledge of legal research methods and performing research; legal principles and their application; scope and character of California statutory law and of the provisions of the California Constitution; principles of administrative and constitutional law; trial and hearing procedure; rules of evidence; court procedures; the conduct of proceedings before administrative bodies; legal terms and forms in common use; statutory and case law literature and authorities; and provisions of laws and Government Code sections administered, enforced, or applicable to the Department's jurisdiction.

Possesses the ability to research, analyze, appraise, and apply legal principles, facts, and precedents to legal problems; analyze situations accurately and adopt an effective course of action; prepare and present statements of fact, law, and argument clearly and logically in written and oral form; prepare correspondence involving the explanation of legal matters; draft opinions, pleadings, rulings, regulations, and legislation; negotiate effectively and conduct

crucial litigation; work cooperatively with a variety of individuals and organizations while maintaining the confidence and respect of others; and work effectively under pressure.

CONFLICT OF INTEREST

This position is subject to Title 16, section 3830 of the California Code of Regulations, the Department of Financial Protection and Innovation's Conflict of Interest Regulations. The incumbent is required to submit a Statements of Economic Interests (Form 700) within 30 days of assuming office, annually by April 1st and within 30 days of leaving office.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety analyst.)

Employee Signature

Date

Employee's Printed Name, Classification

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

Supervisor Signature

Date

Supervisor's Printed Name, Classification